

PERMANENT SYSTEM OF HIGHWAYS IN THE DISTRICT
OF COLUMBIA, ETC.

MAY 5, 1898.—Referred to the House Calendar and ordered to be printed.

Mr. BABCOCK, from the Committee on the District of Columbia,
submitted the following

REPORT.

[To accompany H. R. 10209.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 10209) to repeal an act of Congress approved March 2, 1893, entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other purposes, recommend that House bills Nos. 3970, 5176, 5425, and 5882, relating to this same subject, be laid upon the table, and that H. R. 10209, to repeal the act, to declare void the proceedings thereunder, and that owners of lands thereby affected shall have the same use and enjoyment of their lands as though such proceedings had never been instituted, do pass.

The bill also provides that no subdivision of unsubdivided lands shall hereafter be permitted, no street or highway shall hereafter be extended or improved that is not in substantial conformity to the plan of the city of Washington.

The committee have had the benefit of full explanations from the Commissioners of the District; they have given numerous hearings to all persons who have desired to be heard; and they have carefully considered all the information which they have been able to obtain concerning the very important subject to which the bills referred to relate.

Upon one proposition there appears to be absolute unanimity of opinion, and that is that the existing law is impossible of execution, and that it would cause great and irreparable injury and injustice to the residents of the District to continue it in force in its present form.

Notwithstanding the fact that the act has been on the statute book for more than five years, maps of only two sections, covering not one-half of the area of the District outside the city, have been completed and recorded.

The committee incorporates as a part of its report the report of the special counsel of the Commissioners (Senate Doc. No. 180, Fifty-fifth

Congress, second session), showing that of the forty-eight condemnation cases relating to subdivisions in section 1, embracing the territory between Rock Creek and North Capitol street, begun in the District court, not one has been brought to a conclusion. Six cases have been tried, but in neither one of these has there been a final verdict, and in four instances the jury found it impracticable for them to render a complete verdict in accordance with the requirements of the act.

The Senate document is as follows:

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, March 7, 1898.

SIR: The Commissioners of the District of Columbia have the honor to make return to the following resolution of the Senate:

"Resolved, That the Commissioners of the District of Columbia be, and they are hereby, directed to inform the Senate what moneys have been expended and what liabilities have been incurred, and what bills have been presented for and in respect of the fees and compensation of attorneys and landscape gardeners and for the making of surveys and maps in the execution of the act entitled 'An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities,' approved March 2, 1893, dated March 1, 1898."

They respectfully inclose herewith a statement from the auditor of the District of Columbia showing the expenditures made and liabilities incurred for fees and compensation to landscape gardeners and for making surveys and maps in the execution of the said act. The said statement also contains the amounts paid for services of special attorneys, under and by virtue of the provisions contained in acts of Congress dated, respectively, June 8, 1896, and July 19, 1897.

With regard to the liabilities which have been incurred to such special attorneys, they deem it proper to make the following statement: All proceedings under the highway act were suspended during the pendency of the appeal to the Supreme Court of the United States upon many questions involved in the said highway act. The decision of the said court affirming the constitutionality of the said act was rendered May 10, 1897.

In view of the long-pending litigation, and the distress and embarrassment caused to property owners by the pendency of the causes referred to, it was deemed by the Commissioners absolutely essential for the interests of the people of the District to expedite the trial of these causes, in conformity with the opinion so rendered, at the earliest possible moment. Inasmuch as the various courts of the District were about to cease operations during the summer months, it was impossible to procure the services of a judge who could sit continuously to hear these causes under the decision aforesaid prior to the convening of the regular term of the District courts in the month of September, 1897. The Commissioners submitted the question to the attorney for the District as to whether he would be enabled to prosecute these causes to effect, and received from him a reply which was as follows:

"Replying to your letter of the 20th instant, regarding the street extension cases, I have to say, in view of the regular and increasing work of my office, it will be impossible for me, as the office is now equipped, to try those cases."

"The highway extension act contemplates the trial of those cases by a judge, with a jury in attendance, as in ordinary cases, and, so far as subdivisions are concerned, that the cases should be proceeded with without delay. The interests of property owners affected also require that the cases be disposed of as speedily as possible."

"There are 47 subdivisions embraced within the first section, each subdivision being a case, one of which (the Dennison and Leighton), No. 419, has been partially disposed of. It took a week to try that case in court, and the jury took several days after it was submitted to them to make up their verdict."

"There are about 100 parcels of property, improved and unimproved, in the Dennison and Leighton subdivision, represented by perhaps 60 individual owners, while the Meridian Hill subdivision (also in section 1) contains about 400 parcels, represented by about 250 individual owners."

"While case No. 419 may not be a fair sample because of the novelty of the proceedings and the fact that the statute had not then received judicial construction, yet it is apparent that considerable time will be required to try each case, and I would be greatly surprised if a court year would not be consumed in the trial of the 47 cases in the first section, although after the cases get well under way better progress may be made."

Inasmuch as the property owners were provided with the services of some of the ablest attorneys in the District, the Commissioners deemed it their duty to secure the services of attorneys outside of the regular force who would give special attention to these important matters and would be prepared to secure the earliest possi-

ble action by the courts. The following orders were accordingly passed by the Commissioners:

AUGUST 30, 1897.

Ordered, That A. A. Birney is hereby designated to prosecute the street-extension cases in the courts of the District of Columbia under the act entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," approved March 2, 1893, and amendments thereto, with compensation at \$5,000 per annum, for the year beginning September 1, 1897, with one assistant at \$2,000 per annum and one at \$1,500 per annum, on condition that no obligation for his compensation or that of his assistants is hereby incurred, but that such compensation shall depend upon the making of future appropriations therefor by Congress.

SEPTEMBER 9, 1897.

Ordered, That, in accordance with the provisions of the order of August 30, 1897, Hon. John J. Hemphill is hereby designated to assist A. A. Birney in the prosecution of the street-extension cases in the courts of the District of Columbia under the act entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," with compensation for his services at the rate of \$2,000 per annum, on condition that no obligation for his compensation is hereby incurred, but that such compensation shall depend upon the making of future appropriations therefor by Congress.

That Warder Voorhees is hereby designated as the second assistant to A. A. Birney in the prosecution of the street-extension cases in the courts of the District of Columbia under the act entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," with compensation for his services at the rate of \$1,200 per annum, on condition that no obligation for such compensation is hereby incurred, but that it shall depend upon the making of future appropriations therefor by Congress.

The attorneys named in these orders entered actively upon the trial of these causes, and the last services rendered by them were on February 2, 1898. Since that date no further trials have been had and no further liabilities incurred. No bills whatever for services rendered by the special attorneys herein referred to have been presented. A detailed report of the work performed by said attorneys is herewith respectfully transmitted.

I have the honor to be, with great respect, very truly, yours,

JOHN W. ROSS,
President Board of Commissioners District of Columbia.

THE PRESIDENT OF THE SENATE.

OFFICE AUDITOR OF THE DISTRICT OF COLUMBIA,
Washington, D. C., March 4, 1898.

Expenditures and liabilities under the act to provide a permanent system of highways, approved March 2, 1893.

EXPENDITURES.

For surveying, photolithographing maps, and preparing plans, including cost of stationery and office supplies, and compensation of engineers, draftsmen, and other employees	\$31,003.77
For services, F. Law Olmsted, landscape architect	3,000.00
For personal expenses, F. Law and J. C. Olmsted, landscape architects ..	358.75
For personal expenses, Olmsted, Olmsted, and Eliot, landscape architects ..	760.80
For clerk and marshal's fees, pay of jurors, witnesses, and stenographers ..	7,288.49
For advertising	2,803.60
For services, A. S. Worthington and Samuel Maddox, attorneys	1,000.00
For services, A. S. Worthington, attorney	5,000.00
Total amount expended	51,215.41

LIABILITIES.

For plans and court expenses, bills presented, not yet paid	105.31
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Compensation, commencing with March 1, 1898, at the daily rate of \$31, is due to the office force engaged in preparation of maps and plans.

CONTINGENT LIABILITIES.

For services, A. A. Birney, special attorney, from September 1, 1897, at \$5,000 per annum.

For services, John J. Hemphill, special attorney, from September 9, 1897, at \$2,000 per annum.

For services, Warder Voorhees, special attorney, from September 9, 1897, at \$1,200 per annum.

NOTE.—The attorney for the District, S. T. Thomas, being unable to give the necessary attention to the highway extension cases, Messrs. Birney, Hemphill & Voorhees were appointed, with the understanding and agreement that no compensation should be allowed nor liability incurred for their services unless Congress shall make specific appropriation therefor.

CASES PENDING IN COURT.

There are forty-eight cases of condemnation proceedings that have been filed and are now pending in court, which Special Attorney Birney estimates will cost upon an average \$300 each, or a total amount of \$14,400.

J. T. PETTY,
Auditor District of Columbia.

MARCH 7, 1898.

GENTLEMEN: We have the honor to make the following report, showing proceedings conducted by us, as your attorneys, under the act of Congress entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," approved March 2, 1893.

We were employed as your attorneys in the early part of September, 1897, the contract with Mr. Birney being from September 1, and the contract with Messrs. Hemphill & Voorhees running from the 9th of the same month. There were at that time pending in the court forty-seven petitions filed under the act in question, each involving a subdivision of land, and each subdivision including a great many different parcels. Two of these causes had been tried and partly determined, after a serious contest over the constitutionality of the act of Congress, and many other questions suggested by the ingenuity of counsel.

Appeals to the court of appeals and to the Supreme Court of the United States had been taken, and a final decision by the last-named court rendered on the 10th day of May, 1897. Between the trial in the court of first instance, which was concluded about the 5th day of February, 1896, and the date of the final adjudication by the Supreme Court, the other forty-five cases had lain dormant, through a general desire to obtain an authoritative decision upon the validity of the act. When this decision was rendered it was so late in the season and so near the time for the adjournment of the courts for the summer recess that the judges declined to try them until the fall term.

The pressure of public opinion for early trials and disposition of the cases was so great that we understood it to be your wish that the cases be pushed to a conclusion as early as possible. On August 6 Mr. Thomas, the attorney for the District, had caused citations to issue in all the cases, fixing September 15 as the return day. With the purpose that there should be thenceforward no delay whatever which might be chargeable to the public authorities, we diligently prepared for trial. On the return day the court set September 22 as the time for hearing the uncompleted case of Dennison and Leighton subdivision, No. 419, and on that day the jury was sworn in the case. On September 29, and after certain preliminaries had in the meantime been completed, the trial was begun, and this continued to and including October 8, when the jury retired.

On October 27 the verdict was filed, several hearings having been had meantime upon vexed questions of law involved in the case. Immediately upon the return of this verdict, to wit, on October 8, the jury (for whose impaneling the necessary steps had been taken during the two weeks prior thereto) was sworn in three cases, consolidated for the purposes of trial, being 429, 436, and 437, involving in all 254 separate and distinct parcels, most of them improved by buildings of more or less value. The trial of these cases continued to and including November 13, when the case was submitted. The verdict was returned November 29 and deposited in the clerk's office for examination by counsel. Careful examination revealed a number of errors, which were afterwards corrected, and the verdict was filed December 20, when motions were at once made on your behalf to set it aside as incomplete and irregular. Meantime, and owing to pressure for the opening of Nineteenth street extended, steps had been taken to obtain the necessary condemnation. Another

suit was entered, thus making forty-eight in all. An order of publication in this case, being No. 506, was passed November 2, and on December 6 the marshal was directed to summon a jury for December 14 to try the two cases, 445 and 506.

The trial of these continued from December 14 until December 23. On January 6 the jury made a preliminary report and asked further instructions, which required the presence of counsel, and on January 11 their verdict was filed. A motion was filed at once to set aside the verdict, as allowing too great compensation to two of the landowners, and, after several arguments, this motion was granted on January 28, and on February 2 the jury were discharged from further consideration of the case. A motion for new trial in the Dennison and Leighton subdivision lay dormant after its first presentation to the court until March 1, when it was again argued, and on March 4 was overruled.

The number of days actually spent in court were but a small part of the time really given to the cases by counsel. In the 6 subdivisions which were thus tried there were 351 separate parcels of land, the value of each of which was to be determined and the benefit it might receive from such improvement assessed. These parcels differed widely in size, value, and in the character of their improvements. To try the cases intelligently required the counsel to personally inspect all the property and be familiar with each parcel. There were also many difficult legal questions presented by the array of counsel representing landowners and for which adequate preparation was made.

The magnitude of the sums involved in the aggregate demanded the greatest care. This will be recognized when we state that in the verdict in the Dennison and Leighton subdivision the jury found the amount of damages to landowners to be \$373,900.29. The verdicts in the consolidated cases Nos. 429, 436, and 437 awarded \$519,752.73, while in the cases Nos. 445 and 506 the verdicts awarded \$48,790 as damages.

It will thus appear that of the forty-eight cases filed six have been tried. In none of these has there been a conclusive verdict. In the first one the jury found damages, but reported themselves unable to find definite benefit to any parcel of which no part was taken by the proceedings above the general benefit to all lands in the District. In the three consolidated cases the jury reported that while distinct benefit in their opinion would accrue to other property than that of which a part was taken, they were unable to ascertain the area or calculate the amount. In the two cases involving the Nineteenth street extension the verdict was complete, but was in our opinion unfair and one-sided.

It will thus be seen that progress was made toward finally securing a verdict in accordance with law.

Since the early part of February we have suspended active operations in the courts, thinking it best to await the action of Congress upon the bill now pending before it, materially altering the existing law. Should Congress not act we shall be ready to proceed at once.

Our labors, therefore, may be considered as having been suspended in the early part of February.

Very respectfully,

A. A. BIRNEY.
JNO. J. HEMPHILL.
WARDER VOORHEES.

The COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

No rights of way have, therefore, been acquired, no streets or avenues have been paved and improved as expected, and in the report referred to it is said that active operations in the courts under the act have been suspended since the early part of last February to await the action of Congress.

The verdicts of the juries in the cases referred to, although they did not become effective, plainly indicated the enormous expenditure that the execution of the act would require.

The area of the subdivisions to which the 6 acres above mentioned related was small and insignificant in comparison with the entire area of section 1, yet the jury found that the value of the land proposed to be condemned and included within the streets and avenues proposed to be opened within these 6 subdivisions amounted to over \$850,000. (p. 5 of Doc. 180.)

When it is remembered that the entire area of the District, outside the city limits and not including parks and reservations, is over 25,000 acres, and that of this more than one-third, or over 8,000 acres, is

included within the boundaries of the streets and avenues which appear on the maps and plans which have been or are being completed under the requirements of the act, the magnitude of the outlay that would be required and the burdens that would be imposed by the enforcement of the law becomes apparent.

It was the intention of Congress, plainly expressed in the fifteenth section of the act, that the entire cost of obtaining the right of way for and opening and improving the highways that were to be established under the act was to be paid, one-half out of the revenues of the District and one-half by the owners of benefited lands. Nothing was to be paid; no contribution was to be made by the United States.

The efforts that have thus far been made to execute the law have made it apparent, and everybody appears now to admit, that the money that would be required to carry out the plans on the great scale and with the completeness laid down on the prepared maps can not be paid by the District and the individual property owners.

Leaving out of consideration the question of the justice or injustice of the total exemption of the United States from any share of the burdens that are imposed by the act, the committee is satisfied that the revenues of the District are wholly inadequate to meet the requirements made by the act, and that an attempt to charge the revenues of the District and the land owners with the assessments which the law contemplated would most seriously affect the credit and prosperity of the municipality.

This the committee understands to be the view held by the Commissioners of the District and of the Board of Trade of the city of Washington, and the committee understands it to be the opinion of the board of trade that unless the provision can be made for the payment by the United States of its proper share or proportion of the cost of the establishment of the intended system of the highways, it is desirable and highly important that the entire act should be repealed.

The committee was therefore brought directly to the consideration, primarily, of the question whether it should bring in a bill reversing the policy and repealing the provisions contained in the fifteenth section of the act of 1873.

The committee, without considering any questions as to the legal or equitable obligations of the United States in the premises, or whether or not at another time or in respect of a different or modified system of street extension the United States should not be made chargeable for benefits which it might receive from proposed improvements, determined that at the present time and with reference to the system of highways which has been adopted under the present law and laid down in the prepared plans they could not recommend that any part of the cost of carrying into effect the system proposed should be imposed upon and paid by the United States.

The committee are unwilling at present to advise the final approval and adoption and to provide for the execution of the system described in the maps which provides for the division of the entire areas outside the cities into small squares or parcels of ground, and which can not be carried into effect within any reasonable time or without costly litigation which must continue for an indefinite period.

The question then arose whether, in view of the decision of the committee that they could not now recommend that one-half or any part of the cost of the proposed system of street extensions should be paid by the United States, the act could be advantageously amended to meet the objections revealed by its attempted execution or whether it should be entirely repealed.

All the amendments and the bills to amend before the committee provided for the permanent retention in the office of the surveyor of the District and the recording in the land records of the District of the maps and plans completed or to be completed in accordance with the requirements of the act.

These recorded maps and plans show that over and upon the areas of the sections to which they respectively relate are streets and avenues established as permanent highways, and that they include within their limits about one-third of the entire section over which they are laid.

The statements made to the committee showed most conclusively, and it was not disputed, that although the legal effect of the filing of these maps was not to divest the owner of the lands within the boundaries of the proposed streets of his title or to disturb his right of possession, yet the actual results and consequences of the filing of the maps have been to impair the value of the lands upon which the lines of proposed streets face, to make the sale thereof, the borrowing of money thereon, and the renewal of mortgages extremely difficult and in many instances impossible. Serious losses and in many instances absolute ruin have been caused thereby to many poor persons and to persons of moderate means.

In all abstracts of title the lines of the proposed streets are mentioned, and it is unquestionably true that the presence of these maps on the land records operate as a menace to and an interference with the right of quiet possession of, and of the free transfer of title to, a very large amount of valuable lands within the limits of the District.

The apprehensions of the owners and of intending purchasers are increased by the fact that under the law the streets as laid down are permanent, established highways, and yet there is no certainty that they will ever be actually opened, paid for, and improved. The committee are convinced that this condition of uncertainty should no longer be permitted to exist.

The inconveniences that have resulted and that may still result from the irregularities and want of conformity to any general plan in the subdivisions heretofore made outside the city limits may be and doubtless are great, but they are not sufficiently serious to justify at present the enormous cost that would result from the taking of lands and the destruction of buildings that would be required in order to make such subdivisions conform in part to the plans of the city. It is admittedly impossible that, even if it were desirable, existing outside subdivisions can be made to conform with accuracy or even approximate accuracy to the old plan of the city.

The committee have therefore concluded that the wisest course that can be adopted at present, and one that will at the present time best subserve the interests of the municipality and the landowners and of the United States, is to repeal the act of March 2, 1893, to annul all the proceedings thereunder, to allow the subdivisions heretofore made to remain for the present as they now are, and in respect of all unsubdivided lands outside the city limits and outside the limits of existing subdivisions to prohibit the making and recording of any new subdivisions or the laying out or improving of any new streets, unless they shall be in conformity with the plan of the city.

In this way any increase of the evils caused by new and irregular subdivisions of unsubdivided and agricultural lands will be effectually prevented, and time and opportunity will be afforded to determine what it is necessary and possible to do in respect of the application of the plan of the city to existing subdivisions.

